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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination
Eighty-fourth session

Summary record of the 2267th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 4 February 2014, at 3 p.m.

Chairperson: Mr. Calí Tzay
later: Mr. Avtonomov (Vice-Chairperson)
later: Mr. Calí Tzay

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined initial and second to fifth periodic reports of Honduras
(CERD/C/HND/1-5 and CERD/C/HND/Q/1-5)

1. *At the invitation of the Chairperson, the delegation of Honduras took places at the Committee table.*

2. **Mr. Rizzo Alvarado** (Honduras) said that the indigenous and Afro-Honduran peoples had in the past suffered discrimination, inequality and social exclusion, owing to structural, cultural and socioeconomic factors that had prevented them from fully exercising their rights to land, resources and development. That was why Honduras had focused its efforts on the elimination of racial discrimination and was committed to meeting the obligations set out in international human rights instruments that it had ratified. It had also issued a standing invitation to six special procedures mandate holders. Honduras had acceded to the Convention in 2002; accordingly, article 60 of its Constitution penalized all forms of discrimination based on sex, race, class or any other grounds prejudicial to human dignity. The Criminal Code set out that provision in its article 321, which established the offence of discrimination as an act that subjected another person to discrimination based on sex, race, age, class, religion, party or political affiliation or disability.

3. Honduras had implemented special measures for racial or ethnic groups or persons in need of protection in order to guarantee them equal enjoyment of their human rights and fundamental freedoms. The most important measure was the establishment in 2010 of the Secretariat of State for Indigenous Peoples and People of Afro-Honduran Descent, while other important measures included the announcement in 2011 of the Year for People of African Descent and the drawing up of the Strategic Plan for the Comprehensive Development of the Indigenous Peoples of Honduras, the main aim of which was to improve the socioeconomic situation of indigenous and Afro-Honduran peoples and to strengthen the organizations that represented individual indigenous groups. In cooperation with the United Nations Development Programme (UNDP) and the United Nations High Commissioner for Human Rights (UNHCR), Honduras had implemented the National Plan of Action against Racism and Racial Discrimination and the Comprehensive Development Programme for the Indigenous Peoples of Honduras (DIPA) for the nine indigenous and Afro-Honduran peoples of the country, which represented almost 11,000 people. In 2011, the Ministry of Education had established the Directorate-General for Multilingual Intercultural Education.

4. The Office of the National Commissioner for Human Rights (CONADEH) was an independent institution that was responsible for following up all complaints concerning human rights violations and ensuring that the acts and decisions of the public administration conformed to the standards of international human rights instruments. It was authorized to have direct recourse to any public official, who was obliged to respond to requests. CONADEH had 16 regional offices and its headquarters were located in Tegucigalpa. Its budget had been regularly increased since 2010. Between 2000 and 2012, the Office of the Special Prosecutor for Ethnic Groups and the Cultural Heritage had received and processed 44 complaints relating to acts of discrimination against indigenous and Afro-Honduran peoples that were attributed to public officials and private individuals.

5. The 2013 census, the results of which would be available shortly, had allowed the possibility for respondents to identify themselves as indigenous or Afro-Honduran. The National Agrarian Institute and the Property Institute had granted 76,565 property titles to indigenous and Afro-Honduran peoples during the period 2010–2013. The Intersectoral

Commission on Certification, Enlargement, Disencumbrance and Protection of the Lands of the Garifuna and Miskito Communities of Honduras had been established and private lands considered part of the ancestral lands of the Garifuna and Miskito peoples would be acquired by the authorities and returned to those peoples. The illiteracy rate among indigenous and Afro-Honduran peoples was 14.8 per cent. While that rate was almost identical to the national average of 14.9 per cent, it was higher among the Maya Chorti, Pech and Tolupán peoples, where almost 3 in 10 persons aged 15 or over could not read or write. The average number of years of schooling among indigenous and Afro-Honduran peoples was 4.8, while the Multi-purpose Household Survey of May 2011 indicated that the national average was 7.4 years. The figure was particularly low among the Maya Chorti, Lenca and Tolupán peoples, many of whom often did not advance further than the third year of primary school. Since a Legislative Decree of 1997, bilingual intercultural education had been considered a vital means of preserving and promoting the indigenous cultures of Honduras. It was supported by the National Programme of Education for Indigenous Ethnic and Afro-Antillean Groups, which in 2012 had become the Directorate-General for Multilingual Intercultural Education within the Ministry of Education. Its mission was to manage bilingual intercultural policy and ensure the training of bilingual intercultural teachers.

6. The unemployment rate among the Maya Chorti people was 49.3 per cent, while among all the other peoples it stood at over 50 per cent. The Miskito people had the highest rate of unemployment at 57 per cent. Significant disparities had also been noted in the area of housing between the various indigenous and Afro-Honduran communities. With regard to the participation of indigenous and Afro-Honduran peoples in the political and public life of the country, the Supreme Electoral Tribunal had in 2011 submitted to the National Congress of the Republic a bill relating to political and electoral participation, which included affirmative action to encourage the participation of groups that struggled to exercise their civil and political rights and guaranteed the right of indigenous and Afro-Honduran people to receive information in their own languages. The bill was still under consideration. There was a lack of information on the situation of indigenous and Afro-Honduran women and there were few public policies that aimed to improve their standard of living. That was why the Ministry for the Development of Indigenous and Afro-Honduran Peoples, with the cooperation of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), had decided to develop a public policy on gender equity and equality with regard to indigenous and Afro-Honduran peoples. The objective was to contribute to the development of an egalitarian and equitable Honduras, by establishing the conditions and structures necessary for the promotion of gender equality and equity among indigenous and Afro-Honduran peoples. Lastly, he reaffirmed that his country was committed to respecting and protecting the rights and fundamental freedoms of the indigenous and Afro-Honduran peoples, primarily through the implementation of the public human rights policy and the National Action Plan on Human Rights.

7. **Mr. Murillo Martínez** (Country Rapporteur) said that the Committee was aware of the difficult task the delegation faced in having to present the initial report just as Honduras had undergone a change of Government. He asked whether the Ministry for Indigenous and Afro-Honduran Peoples, which had been merged with another body, might not lose its specificity. He wished to know whether the ambitious employment programme announced by the new Government included special measures for the most disadvantaged groups, including ethnic minorities, and whether any initiative had been launched to combat the structural discrimination affecting indigenous, Afro-Honduran and Miskito peoples. The delegation was asked to indicate whether Honduras planned to implement special measures in favour of those groups in order to guarantee them equal opportunities compared with the rest of the population. It might also provide further details on the follow-up given to the complaint of racism lodged by Osbin Francisco Pérez, an architecture student at the

National Autonomous University of Honduras, against Professor Miguel Antonio Fiallos, and the complaints lodged by the Honduran non-governmental organization ODECO against Enrique Ortez Colindres, with regard to racist remarks the latter had made about President Obama, and member of Parliament Miguel Ángel Gámez, who had insulted an Afro-Honduran member of Parliament.

8. He wished to know whether steps had been taken by the Government or Parliament in order to ensure that the ethnic diversity of the Honduran population was recognized in the Constitution. He asked the delegation to provide information on measures taken by the State party to implement the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as statistics on the number of prior consultation procedures conducted under that instrument, specifying the names of the communities concerned, the purpose of the consultations and their outcomes. It would be interesting to know whether the State party considered that the absence of regulations impeded the effective application of the principle whereby populations affected by a project must be consulted in advance. In that regard, he would welcome a comment from the delegation regarding legislation relating to landownership, the development of special regions and fisheries. In addition, the delegation might express the view of the State party regarding allegations that legislating on the exploitation of mineral resources, hydrocarbons and water resources aggravated the social and environmental vulnerability of the ethnic minorities concerned. The delegation was also asked to provide a summary of the way in which the land rights of ethnic minorities over ancestral lands were recognized in Honduras and to provide relevant statistics disaggregated by ethnic group. It might also provide statistics relating to the number of Miskito fishermen who had died or become disabled following diving accidents and the number of complaints received by the Honduran authorities regarding violations of the rights of Miskito divers, and describe the concrete measures taken to resolve the dire situation of that group of people. Lastly, he asked the delegation to indicate whether any light had been shed on the deaths of indigenous leader António Trejo and human rights activist Tomás García.

Mr. Avtonomov (Vice-Chairperson) took the Chair.

9. **Mr. Diaconu** said that the definition of discrimination that appeared in article 321 of the Criminal Code still differed greatly from that set out in article 1 of the Convention. In particular, it used the term "race", despite the fact that the concept had long been considered obsolete since it had no scientific basis. He noted that the provisions of article 4 were only partially covered by Honduran legislation. He therefore asked the delegation to indicate whether the State party intended to review its legislation in order to bring it fully into line with articles 1 and 4 of the Convention. Noting that Afro-Hondurans were the only group of African descent mentioned in the report, he asked whether that meant that domestic legislation did not protect all persons of African descent against discrimination, regardless of their nationality. He also wished to know how the right of indigenous persons to be taught in their own language was taken into account in practice and how that right was implemented. The delegation was asked to indicate whether the Convention had already been invoked directly before the courts and to describe the steps taken by the Office of the Special Prosecutor for Ethnic Groups and the Cultural Heritage to follow up on the 44 complaints made against public officials and individuals received between 2010 and 2012. Statistics relating to the number of persons prosecuted and convicted on the basis of those complaints would be welcome.

10. The delegation might specify whether CONADEH had been granted A status by the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). It would be interesting to know whether indigenous people were in legal dispute with non-indigenous people with, regard to the exploitation of natural resources and how those differences were

resolved. It would also be interesting to know about the follow-up given by the Government of Honduras to debates that had taken place at ILO concerning the construction of the Patuca III dam, which was opposed by indigenous peoples on the basis of Convention No. 169. He also wished to know whether the national plan for the promotion of human rights submitted to the President in 2010 had been adopted and whether special steps had been taken to improve the economic situation of indigenous groups, in particular the Miskito, who lived in extreme poverty. Lastly, the delegation was invited to indicate whether an investigation had been launched into the incident that had taken place in May 2012 not far from the town of Ahuas, when four Miskito persons had been killed by members of the National Police, and whether the perpetrators had been prosecuted and convicted.

Mr. Cali Tzay (Chairperson) resumed the Chair.

11. **Mr. Avtonomov** asked whether CONADEH was authorized to make decisions on complaints that it had received or whether it passed them on to the competent agencies for follow-up. He wished to know how many complaints had been received by that body and how many related to violations of the Convention. Lastly, he asked whether indigenous customary law was recognized in Honduras.

12. **Mr. Bossuyt**, having read in the report that the international instruments ratified by Honduras were part of domestic law and enjoyed constitutional status, asked whether that meant that the Constitution could be modified in order to bring it into line with an international instrument ratified subsequently by the State party. He did not understand why, in the preliminary draft amendment to article 321 of the Criminal Code cited in paragraph 15 of the report, different abilities featured among the motives for discrimination and requested clarification in that regard. Having noted in the report that foreigners found guilty of discrimination were extradited from the territory once they had served their sentence, which amounted to a double punishment, he asked whether the extradition measure might not be imposed instead on a case-by-case basis by a judge and whether, so that the character of the perpetrator, his or her status (permanent or temporary resident) and the circumstances of the offence could be taken into account. Lastly, he asked whether the State party planned to amend article 504 of the Labour Code, which included discriminatory provisions with regard to foreigners, and to bring article 10 of the Criminal Code into line with article 102 of the Constitution as modified, in view of the fact that the latter in its new form provided for the possible extradition of suspects in case of serious offences such as drug trafficking and terrorism.

13. **Mr. Lindgren Alves** asked whether indigenous and Afro-Honduran people, who accounted for 20 per cent of the population, were the only groups that experienced economic and social difficulties in the State party. He asked for more details on the criteria usually applied in order to distinguish between indigenous persons and persons considered non-indigenous. He also asked for the delegation's view regarding the connotations of the term "Zambos", the name given by the Spanish to the Miskito people.

14. **Mr. Khalaf** asked for more information on the degree of independence of the judiciary and the powers granted to it and, more specifically, on the scope and implications of the bill relating to the legal profession and the Judicial Council. Stressing the utmost importance of ensuring the independence of the judiciary with regard to legislative and executive powers, he asked what measures the Inter-agency Commission on Criminal Justice was working on, what its functions were and how its independence was ensured. Lastly, he asked whether the judicial reform under way aimed to allow the provisions of the Convention to be applied in an accurate and independent manner.

15. **Mr. Vázquez** enquired as to the measures taken by the State party to combat corruption in the police force and to punish police officials responsible for acts of racial discrimination. The removal of a number of Supreme Court magistrates that had been

opposed to the adoption of a bill on the creation of "special development zones" — which affected the land rights of the Garifuna communities — called for comments from the delegation will respect to the real independence of the judiciary and the current status of that bill. He noted that some non-governmental organizations, including OFRANEH, had criticized the Office of the Special Prosecutor for Ethnic Groups and the Cultural Heritage for its failure to investigate complaints submitted by indigenous and Afro-Honduran persons, and asked whether a structural reform of that body was envisaged in order to guarantee equality for all before the courts.

16. **Mr. Yeung Sik Yuen**, referring to the preliminary draft amendment to article 321 of the Criminal Code, which expressly mentioned the prohibition of racial discrimination against indigenous and Afro-Honduran persons, said that it would be less restrictive and therefore preferable to prohibit discrimination "on racial grounds", without specifying which groups were protected. He was surprised that the competent authorities had received only 44 complaints from indigenous and Afro-Honduran persons in 12 years and asked whether the State party had taken measures to raise awareness among those people of their rights. He also wished to know what should be understood by "special disqualification" and "absolute disqualification", with regard to the sanctions imposed on the perpetrators of acts of discrimination committed with violence. He asked whether torture was defined in domestic legislation and, if so, what penalties it carried. He asked whether the State party planned to adopt measures to help the many Miskito persons with disabilities and to address the high rate of illiteracy, unemployment and malnutrition among indigenous and Afro-Honduran people. He also requested the opinion of the delegation on disparities between communities with regard to the school enrolment ratio. Lastly, he asked whether it was true that three indigenous groups had been forcibly displaced from their land without being able to give prior consent.

17. **Ms. Hohoueto** asked whether the Special Prosecutor for Ethnic Groups and the Cultural Heritage was attached to another body or was entirely independent. She found it paradoxical that the institution was dedicated solely to the defence of "ethnic groups" and asked the delegation whether that in itself did not constitute a certain form of discrimination against other groups of the population. She wished to know according to what criteria and under what laws a person could be expropriated from his or her ancestral lands on the grounds of national interest.

18. **Mr. Kemal** asked whether the measures taken by the State party to combat organized crime and put an end to extortion, which had very negative effects on the economic development of the poorest groups, had been successful and had facilitated the protection of the most vulnerable against such crimes. He also asked whether it was true that members of special international forces recruited to participate in the fight against organized crime had on several occasions attacked indigenous persons.

19. **Ms. Crickley** asked for additional information on the measures to be implemented within the framework of the National Plan of Action against Racism, as well as the purpose and role of the National Commission against Racism. She invited the delegation to explain what the State party did to help indigenous persons, whose income was much lower than the national average, to emerge from poverty, which in itself constituted a form of structural racism. She asked whether any programmes to raise awareness of the fight against racism, in particular with regard to minorities, had been established for the police and members of the judiciary. Lastly, she wished to know more about the measures taken to combat discrimination against indigenous women and, more specifically, about the role of the National Institute for Women in that regard.

20. **Mr. Amir** was surprised that the ratification of the Convention had occurred more than 30 years after its signature, which led him to believe that the State party had not considered the fight against racial discrimination to be a priority. He invited the delegation

to comment on the matter, to indicate the reasons for the gap and to elaborate on the internal procedures governing the ratification of international instruments.

21. **The Chairperson**, speaking as a Committee member, asked the delegation to explain in more detail the semantic distinctions between the terms "indigenous", "ethnic" and "tribal" and between the concepts of "tongue", "dialect" and "language" that appeared in the report under consideration.

The meeting rose at 5.50 p.m.